

No doubt the trustee acted with great and unusual imprudence, in undertaking and hastening the settlement of so large an estate without the advice of counsel, as he seems to have done; but that affords no reason why he should be treated with more severity than other trustees, or deprived of any reasonable presumption in his favor.

There is no evidence of any combination with the Bevans, to give them a greater part of the estate than they were entitled to. They were, in fact, too young to have participated in any scheme of the kind. The estate was nearly closed before Mrs. Bevans married again, and the proceeds of the real estate were paid over, and the final settlement of the personal estate made before there was any issue of the marriage.

The trust fund paid over, remained for a considerable time in the hands of the guardian, yet no attempt was made to assert the right of the complainants, which has since been established, nor even for a considerable time after the receipt of it from the hands of the guardian.

From all this, it is evident that the children of Mrs. Bevans, living at the death of Mrs. Ogle, were considered by the trustee and their mother, and the Chancellor himself, to have been entitled to the whole, and there is nothing to show that a contrary opinion was entertained by any one, until the proceedings instituted in this court, at a late period, after the death of their mother, or a short time before, on the petition of J. Bevans; although this ignorance of the law may not exempt the trustee from any liability, it contains no ground for treating him with harshness.

Let us now inquire into the liabilities of B. Ogle to the complainants, arising from his administration of the personal estate. It is now settled by the Chancellor's order of November 20th, 1844, and the proceedings in the petition case, and admitted in argument, that the complainants, children of Mrs. Bevans by her second husband, were equally entitled with those of the first to maintenance and education, out of the interest of the trust fund, and to a distributive share of the principal after the death of their mother. It seems to have been the desire of B. Ogle, from the first, to rid himself of the protracted trust contemplated